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instituted as deemed appropriate, including (but not limited to) the following:

(a) Institute administrative proceedings, including for: The recovery of unpaid wages (including recovery of prohibited recruitment fees paid or impermissible deductions from pay, and recovery of wages due for improperly placing workers in areas of employment or in occupations other than those identified on the *Application for Temporary Employment Certification* and for which a prevailing wage was not obtained); the enforcement of provisions of the job order, 8 U.S.C. 1184(c), 20 CFR part 655, Subpart A, or the regulations in this part; the assessment of a civil money penalty; make whole relief for any person who has been discriminated against; reinstatement and make whole relief for any U.S. worker who has been improperly rejected for employment, laid off or displaced; or debarment for no less than 1 or no more than 5 years.

(b) The remedies referenced in paragraph (a) of this section will be sought either directly from the employer, or from its successor in interest, or from the employer's agent or attorney, as appropriate.

§ 503.21 Concurrent actions.

OFLC has primary responsibility to make all determinations regarding the issuance, denial, or revocation of a labor certification as described in § 503.1(b) and in 20 CFR part 655, Subpart A. The WHD has primary responsibility to make all determinations regarding the enforcement functions as described in § 503.1(c). The taking of any one of the actions referred to above will not be a bar to the concurrent taking of any other action authorized by 8 U.S.C. 1184(c), 20 CFR part 655, Subpart A, or the regulations in this part. OFLC and the WHD have concurrent jurisdiction to impose a debarment remedy under 20 CFR 655.73 or under § 503.24.

§ 503.22 Representation of the Secretary.

The Solicitor of Labor, through authorized representatives, will represent the Administrator, WHD and the Secretary in all administrative hearings

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under 8 U.S.C. 1184(c)(14) and the regulations in this part.

§ 503.23 Civil money penalty assessment.

(a) A civil money penalty may be assessed by the Administrator, WHD for each violation that meets the standards described in § 503.19. Each such violation involving the failure to pay an individual worker properly or to honor the terms or conditions of a worker's employment required by the *H-2B Registration, Application for Temporary Employment Certification*, or *H-2B Petition*, constitutes a separate violation. Civil money penalty amounts for such violations are determined as set forth in paragraphs (b) to (e) of this section.

(b) Upon determining that an employer has violated any provisions of § 503.16 related to wages, impermissible deductions or prohibited fees and expenses, the Administrator, WHD may assess civil money penalties that are equal to the difference between the amount that should have been paid and the amount that actually was paid to such worker(s), not to exceed \$10,000 per violation.

(c) Upon determining that an employer has terminated by layoff or otherwise or has refused to employ any worker in violation of § 503.16(r), (t), or (v), within the periods described in those sections, the Administrator, WHD may assess civil money penalties that are equal to the wages that would have been earned but for the layoff or failure to hire, not to exceed \$10,000 per violation. No civil money penalty will be assessed, however, if the employee refused the job opportunity, or was terminated for lawful, job-related reasons.

(d) The Administrator, WHD may assess civil money penalties in an amount not to exceed \$10,000 per violation for any other violation that meets the standards described in § 503.19.

(e) In determining the amount of the civil money penalty to be assessed under paragraph (d) of this section, the Administrator, WHD will consider the type of violation committed and other relevant factors. In determining the level of penalties to be assessed, the highest penalties will be reserved for

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willful failures to meet any of the conditions of the *Application for Temporary Employment Certification* and *H-2B Petition* that involve harm to U.S. workers. Other factors which may be considered include, but are not limited to, the following:

(1) Previous history of violation(s) of 8 U.S.C. 1184(c), 20 CFR part 655, Subpart A, or the regulations in this part;

(2) The number of H-2B workers, workers in corresponding employment, or improperly rejected U.S. applicants who were and/or are affected by the violation(s);

(3) The gravity of the violation(s);

(4) Efforts made in good faith to comply with 8 U.S.C. 1184(c), 20 CFR part 655, Subpart A, and the regulations in this part;

(5) Explanation from the person charged with the violation(s);

(6) Commitment to future compliance, taking into account the public health, interest or safety; and

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss or potential injury to the workers.

§ 503.24 Debarment.

(a) *Debarment of an employer.* The Administrator, OFLC may not issue future labor certifications under 20 CFR part 655, Subpart A to an employer or any successor in interest to that employer, subject to the time limits set forth in paragraph (c) of this section, if the Administrator, WHD finds that the employer committed a violation that meets the standards of § 503.19. Where these standards are met, debarable violations would include but not be limited to one or more acts of commission or omission which involve:

(1) Failure to pay or provide the required wages, benefits, or working conditions to the employer's H-2B workers and/or workers in corresponding employment;

(2) Failure, except for lawful, job-related reasons, to offer employment to qualified U.S. workers who applied for the job opportunity for which certification was sought;

(3) Failure to comply with the employer's obligations to recruit U.S. workers;

(4) Improper layoff or displacement of U.S. workers or workers in corresponding employment;

(5) Failure to comply with one or more sanctions or remedies imposed by the Administrator, WHD for violation(s) of obligations under the job order or other H-2B obligations, or with one or more decisions or orders of the Secretary or a court under 20 CFR part 655, Subpart A or this part;

(6) Impeding an investigation of an employer under this part;

(7) Employing an H-2B worker outside the area of intended employment, in an activity/activities not listed in the job order, or outside the validity period of employment of the job order, including any approved extension thereof;

(8) A violation of the requirements of § 503.16(o) or (p);

(9) A violation of any of the provisions listed in § 503.16(r);

(10) Any other act showing such flagrant disregard for the law that future compliance with program requirements cannot reasonably be expected;

(11) Fraud involving the *H-2B Registration*, *Application for Temporary Employment Certification*, or *H-2B Petition*; or

(12) A material misrepresentation of fact during the registration or application process.

(b) *Debarment of an agent or attorney.* If the Administrator, WHD finds, under this section, that an agent or attorney committed a violation as described in paragraph (a) of this section or participated in an employer's violation, the Administrator, OFLC may not issue future labor certifications to an employer represented by such agent or attorney, subject to the time limits set forth in paragraph (c) of this section.

(c) *Period of debarment.* Debarment under this subpart may not be for less than 1 year or more than 5 years from the date of the final agency decision.

(d) *Debarment procedure.* If the Administrator, WHD makes a determination to debar an employer, attorney, or agent, the Administrator, WHD will send the party a Notice of Debarment. The notice will state the reason for the debarment finding, including a detailed explanation of the grounds for and the duration of the debarment and inform